

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

United States of America

vs

5:07-cr-84

Ryan Finniss

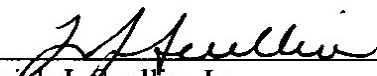
ORDER

Before the Court is an application by the defendant to correct his sentence for clerical error or mistake, pursuant to Rule 35(a) of the Federal Rules of Criminal Procedure. The defendant believes that, after all the sentencing guideline adjustments were applied, the Court incorrectly calculated his total offense level, that he should have been sentenced at level 19 and not at a level 20 .

On November 1, 2007, the defendant was sentenced on a two count indictment to 41 months imprisonment, on each count, to be served concurrently. In calculating the offense level, the counts were grouped pursuant to U.S.S.G. §3D1.2. The adjusted offense level for count 1 (group 1) was 22 and the adjusted offense level for count 2 (group 2) was 15. The Court then applied the multiple-count adjustment, pursuant to §3D1.4, first, by determining the number of units to be applied to the groupings (group 1 received 1 unit and group 2 received a half unit) then determining which group had the higher offense level (group 1 had the higher offense level of 22) then applying the number of units to the higher offense level for a combined adjusted offense level of 23. (when the number of units is 1 and one half, the group with the higher offense level is increased by 1 level). The Court then applied the 3 level adjustment for acceptance of responsibility and ultimately found an adjusted total offense level of 20.

Based upon these calculations, the Court finds no error or mistake was made at sentencing and therefore the defendant's application is Denied.

IT IS SO ORDERED.
November 19, 2007



Frederick J. Scullin, Jr.
Senior United States District Court Judge

